GreenTeam of San Jose *and* Scott Bailey

Sanitary Truck Drivers and Helpers Local Union No. 350 affiliated with the International Brotherhood of Teamsters, AFL–CIO *and* Scott Bailey. Cases 32–CA–13821, 32–CA–13920, and 32–CB–4298

March 22, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On October 10, 1995, Administrative Law Judge Timothy D. Nelson issued the attached decision. The Respondent Union and the Respondent Employer filed exceptions and supporting briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Orders as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent Union, Sanitary Truck Drivers and Helpers Local Union No. 350, affiliated with the International Brotherhood of Teamsters, AFL–CIO, San Jose, California, its officers, agents, and representatives, and the Respondent Employer, GreenTeam of San Jose, San Jose, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order except that the attached Appendix A is substituted for that of the administrative law judge.

[1] In adopting the judge's finding that the Respondent Employer violated Sec. 8(a)(3) and (1) of the Act, we do not rely on the judge's conclusion that the Union's demand-for-discharge letter was facially inadequate under the parties' contract.

[2] The judge inadvertently failed to conform the notice to be posted by the Respondent Union with the Order and remedy section of his decision. We do so here.

APPENDIX A

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT cause or attempt to cause GreenTeam of San Jose or any other employer to discharge or otherwise discriminate against employees in violation of Section 8(a)(3) of the Act.

WE WILL NOT invoke or threaten to invoke the discharge provisions of an otherwise lawful union-security clause against employees in order to collect amounts which cannot lawfully be demanded from employees as a condition of their hire or tenure.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make Scott Bailey whole, with interest, for any loss of pay or benefits he may have suffered as a result of his discharge at our request by GreenTeam of San Jose, during the 5-day period ending February 23, 1994.

WE WILL remove from our files any references to the unlawful discharge and failure to reinstate Bailey, and we will notify him in writing that this has been done and that the discharge and failure to reinstate will not be used against him in any way.

WE WILL refund $43 to Scott Bailey, with interest, for September 1993 dues and a death and illness fund assessment we collected from Bailey by threatening him with discharge or a refusal to clear him for work with GreenTeam or both.

SANITARY TRUCK DRIVERS AND HELPERS LOCAL UNION NO. 350, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL–CIO

Jeffrey Henze, Esq., for the General Counsel.
Michael Lynn, Labor Relations Representative, of Pleasanton, California, for Respondent GreenTeam.
Duane B. Beeson, Esq. (Beeson, Tayer & Bodine), of San Francisco, California, for the Charging Party/Respondent Union.
Scott Bailey, pro se.

DECISION

STATEMENT OF THE CASE

TIMOTHY D. NELSON, Administrative Law Judge. I heard these consolidated cases in trial in Oakland, California, on March 15, 1995, pursuant to a consolidated complaint (complaint) and notice of hearing issued in the name of the General Counsel of the National Labor Relations Board by the Regional Director for Region 32 on May 27, 1994,[1] against Sanitary Truck Drivers and Helpers Local Union No. 350, affiliated with International Brotherhood of Teamsters, AFL–CIO (the Union) and GreenTeam of San Jose (GreenTeam). The complaint traced from an original charge filed by the Union against GreenTeam on March 25, amended on April

[1] All dates below are in 1994 unless I say otherwise.

25, and from additional charges against both the Union and GreenTeam filed on May 6 by Scott Bailey (Bailey).

The complaint alleges that the Union violated Section 8(b)(2) and (1)(A) of the Act when it demanded by letter dated February 8 that GreenTeam discharge Bailey at the end of his February 15 shift for his alleged noncompliance with a governing union-security clause, a demand that GreenTeam honored by discharging Bailey on February 16. The complaint further alleges that the Union in various ways violated fiduciary obligations owed to Bailey; thus it alleges that the Union did not give Bailey proper notice of and a reasonable opportunity to cure his alleged delinquency before making its discharge demand. In addition, the complaint, as amended at the trial, alleges two alternative, independent theories of violation by the Union of Section 8(b)(1)(A) and (2): As one alternative, the complaint alleges that the amount demanded by the Union for Bailey to cure his alleged arrearage improperly included dues for the first 30 days he worked under the union-security clause. As a second alternative, it alleges that the amount the Union demanded from Bailey improperly included ''advance dues.'' On brief, the General Counsel advances an additional, independent attack on the *amount* the Union demanded, and eventually got, from Bailey before clearing him for work—that it included a one-time, $10 assessment for the Union's death and illness fund. Also on brief, the General Counsel advances yet one more theory of 8(b)(2) violation—that the Union unlawfully refused to treat Bailey's transmission to GreenTeam of a signed checkoff authorization form as compliance with Bailey's union-security obligations, and unlawfully maintained its demand for his discharge in the face of knowledge that Bailey had signed and transmitted this form to GreenTeam.

The portions of the complaint against GreenTeam allege, in substance, that GreenTeam violated Section 8(a)(3) and (1) of the Act when, (a) it discharged Bailey on February 16, despite having been put on notice and having reason to believe that Bailey had by then fulfilled his union-security obligations, and (b) it failed to reinstate Bailey on or after February 17, at times when it knew from the Union that Bailey had cured his alleged arrearages and was cleared to work, and at times when it had not replaced Bailey.

The Union and GreenTeam admit, and I find, that the Board's jurisdiction is properly invoked,[2] but they each deny the wrongdoing attributed to them in the complaint.

The General Counsel and GreenTeam filed posttrial briefs, which I have considered.[3] I will conclude, based on findings and reasoning set forth below, that the Union independently violated Section 8(b)(2) and (1)(A) when, (a) it demanded Bailey's discharge for nonpayment of a sum that included amounts that the Union could not lawfully collect by invoking the discharge provisions of the union-security clause; and (b) it failed to revoke its discharge demand once it learned that Bailey had signed a checkoff form and had turned it in to GreenTeam. I will further conclude that GreenTeam violated Section 8(a)(3) and (1) when, (a) it fired Bailey even though it had reasonable grounds to believe that the Union's discharge demand was unlawful, and (b) it failed to reinstate Bailey after it had gotten proof in the form of a union clearance that Bailey had satisfied those alleged obligations.

FINDINGS OF FACT

I. BACKGROUND

A. *GreenTeam's Operations; the Effective Date of the Extension Agreement Bringing Recyclables Drivers and Helpers Under Union Contract Coverage; and Relevant Union-Security Provisions*

GreenTeam began operations on July 1, 1993, when it took over a garbage pickup and disposal contract with the city of San Jose, California, a contract formerly held by Waste Management, Inc., whose drivers and helpers were represented by the Union. On assuming Waste Management's garbage pickup duties, GreenTeam also signed a labor agreement with the Union covering the drivers and helpers, called the ''Garbage Service Agreement'' (garbage agreement), which is effective by its terms from July 1, 1993, to July 1, 1996.

At roughly the same time it took over the San Jose garbage pickup contract, GreenTeam also took over a separate contract with the city of San Jose for pickup of recyclable materials, a contract formerly held by Waste America, whose drivers and helpers were unrepresented by any union. GreenTeam and the Union then argued for a few months over the Union's demand to extend the coverage of the garbage agreement to the recyclables drivers and helpers, but in September, this dispute was resolved when GreenTeam signed a memorandum of understanding with the Union, the ''effective date'' of which was recited to be ''September 6, 1993.'' This memorandum functioned in gross as an agreement to extend the provisions of the garbage agreement to the recyclables drivers and helpers, with special provision for separate hourly pay rates for the latter group, and an acknowledgment that the latter group would constitute a separate seniority pool.

The garbage agreement contains a union-security clause which now applies to the recyclable drivers and helpers. In pertinent part, the union-security language states (my emphasis):

> It shall be a condition of employment that all employees covered by this Agreement shall apply for membership in the Union on or after the 31st day of employment, *or the effective date of this Agreement, whichever is later*, and as a condition of continued employment, shall maintain their membership in the Union in good standing. A member in good standing shall mean any member who pays or tenders payment of regular initiation fees and dues to the Union. Written evidence of loss of good standing will be submitted by the

[2] Thus, the Union and GreenTeam admit that (a) the Union is a labor organization within the meaning of Sec. 2(5) of the Act; (b) GreenTeam is a California corporation, with offices and places of business in San Jose, California, engaged in a refuse pickup and recycling business; (c) GreenTeam has annual gross revenues in excess of $500,000; (d) GreenTeam annually purchases and receives goods and services valued in excess of $50,000 directly from sellers or suppliers located outside California; (e) GreenTeam is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act; and (f) all charges filed against the Union and GreenTeam were served on those parties on or about the dates they were filed.

[3] The Union's attorney made certain arguments on the record, but did not file a brief after the trial.

> Union to the employer before severance is made from the payroll.
>
> [T]he employer agrees to make deductions from employees' wages for Union membership dues (including any past dues owed but unpaid), initiation fees, and assessments only on the following basis:
>
> 1. The Union must present the Paymaster with a legal written authorization dated and signed by the employee.
>
> 2. The Union agrees to furnish the Employer written notice of the amount to be deducted for initiation fees and dues and of the identity of the Union official authorized to receipt of [sic] such deduction.
>
> [Other provisions omitted.]

At material times the standard initiation fee charged by the Union was $300. However, the Union had waived the initiation fee for new members from the recyclers drivers' and helpers' ranks who had voluntarily joined and begun to pay monthly dues by no later than October 15, 1993. The standard monthly dues amount was $33, to be paid on the first day of each month, and to be applied through the end of that same month. In addition, the Union typically required new members to make a one-time payment of $10 into the Union's death and illness benefit fund.

B. *Relevant Practices of the Parties*

The parties stipulated, and I find, that ''[o]ne way for a recycling driver [or] helper to satisfy his or her obligations under the union security clause was to fill out copies of the forms [described next] and turn them in to the employer. Who would, then, turn them in to the Union.''

One such form is captioned ''Employment Notice and Union Contract Requirements'' (employment notice form). Among other things, this form recites verbatim the first paragraph of the union-security clause, supra, and contains a space for the employee's signature underneath the sentence, ''I have read and understand the above requirements.'' The other form in the set is captioned ''Checkoff Authorization'' (checkoff form). This form, although containing the Union's name and address at the top, is implicitly addressed to the signer's employer, and is apparently treated by the parties as the ''legal written authorization'' to the ''Paymaster,'' described in the union-security clause, supra. The checkoff form states in pertinent part:

> I . . . hereby assign to [the Union] from any wages earned or to be earned by me as your employee, any initiation fee, monthly dues or assessments, which are required to be paid by me for the purpose of maintaining membership in the Union, and I authorize and direct you to deduct such moneys from my first pay each month and remit the sum to the Union.

I also note in this regard that the union-security clause permits the employer, on receipt of such a signed checkoff form, ''to make deductions from employees' wages for Union membership dues (*including any past dues owed but unpaid*), initiation fees, and assessments.''

Based on the testimony of GreenTeam's human resources manager, Heather Anderson, I further find as follows: When an employee submits such forms to GreenTeam, Anderson examines them for completeness and accuracy, then sends one copy to the Union. GreenTeam then waits for the Union's next monthly billing statement, listing drivers on checkoff and the amount claimed to be owed to the Union by each driver. When it gets this statement, GreenTeam then transmits a check to the Union for the total sum on the statement, and makes appropriate deductions from the listed employees' next paychecks. GreenTeam relies on the Union's billing statement, and makes no independent effort to ascertain whether the amount claimed to be owed by each employee is properly calculated.

When the Union wishes to exercise its right under the union-security clause to seek a bargaining unit employee's discharge for noncompliance with union-security obligations, the Union routinely issues a form letter to the employer seeking the employee's discharge on a future date, which is usually about a week after the date the demand-for-discharge letter was transmitted. The letter the Union sent to GreenTeam on February 8 concerning Bailey is a specimen of the Union's standard demand-for-discharge letter; that letter said:

> This letter is to advise you that employee SCOTT BAILEY is not in compliance with the Union Security Clause of the Collective Bargaining Agreement.
>
> We are requesting his termination at the end of the shift of FEBRUARY 15, 1994.
>
> Unless you hear directly from the Local Union office, the above is final.

The Union routinely mails a copy of this letter to the targeted employee, in the hope that the employee will come into compliance with his or her union-security obligations before the discharge deadline in the letter. Moreover, the record suggests overall, and I find, that the targeted employee learns *in writing* for the first time of his claimed noncompliance (but not the nature of the noncompliance, nor the amount of any sums claimed to be owed, nor the manner of computation of such amounts) only on receipt of a copy of the Union's demand-for-discharge letter. The Union's chief executive, Secretary-Treasurer Robert Morales, testified that he will go out of his way to be ''lenient'' with employees who claim financial difficulty as an obstacle to paying any sums owed, and will work with them to set up extended payback schedules in such instances, and reserves such demand-for-discharge letters only for the obviously recalcitrant employees. The record further shows that the Union targeted several GreenTeam recyclables drivers with such letters in the months after they became covered by the provisions of the garbage agreement, but later ''cleared'' them for work when they in one way or another satisfied the Union that they were in ''compliance.''

C. *Bailey's Background*

Bailey, originally hired by GreenTeam for the recycling operation on July 6, 1993, was a recycling driver at all times that concern us. Bailey admittedly had done nothing to satisfy his union-security obligations until, at the earliest, mid-November 1993, at which time he claims to have signed and submitted a set of employment notice and checkoff forms to one of GreenTeam's dispatchers. Neither GreenTeam nor the Union has any record of ever receiving these forms, how-

ever, and if it mattered to the outcome, I would find that Bailey made no such submission in mid-November 1993.[4]

On January 21, Bailey asked GreenTeam's operations manager, Mosie Hill, to take the day off to take care of ''union business.''[5] Hill granted his request. Crediting Shop Steward Charles Remlinger, I find that Bailey also told Remlinger on January 21 that he intended to go to the Union's office in San Francisco to take care of his dues obligations, and asked Remlinger for directions, whereupon Remlinger drew out a map and gave it to Bailey. However, Bailey admittedly did not go to the Union's office that day and, although he claimed that he instead called the Union's office that day and spoke to Marina George, the secretary-bookkeeper, I find instead, crediting George's more convincing testimony, that Bailey did not call George until February 1, during which conversation occurred the events described next.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Bailey called the Union's office on February 1, spoke to George, and questioned why he wasn't yet a member and what he had to do to join the Union. George asked him for his social security number, employer's name, and other identifying information, and then used this information to do a computer search of the Union's records. She reported to Bailey that she had no record that he existed, much less that he was employed by GreenTeam. Bailey then asked how much he would have to pay to join. George said she wasn't sure, expressing particular doubt about whether Bailey would have to pay the $300 initiation fee, and she told Bailey she would check with Secretary-Treasurer Morales. After that call ended, George went to Morales, who confirmed that it was too late for Bailey's initiation fee to be waived, and George then computed Bailey's total obligation to be $475, broken down as follows: $300 for the initiation fee and $165 for monthly dues for the 5-month period from September 1 through January 1, plus an additional $10 for the one-time death and illness benefit contribution.

Later on February 1, or soon thereafter, Bailey called George again. She told Bailey that he owed $475, and gave him the breakdowns, as above. She further explained that Bailey could have avoided the $300 initiation fee if he had joined the Union during the period when the Union was waiving that fee. Crediting George, I find that Bailey agreed to ''send'' the $475 amount to her. Crediting Morales, however, I find that Bailey soon thereafter called Morales and professed to have been confused about whether he owed the initiation fee in the light of the Union's waiver of that fee; whereupon Morales scoldingly told Bailey that he knew that the initiation-fee waiver period had expired last October 15, and that he must now pay what he owed or be fired.

On February 8, having received neither money nor any further call or visit from Bailey, the Union sent the demand-for-discharge letter, supra, by fax to GreenTeam, addressed to Hill. Bailey found a copy of this letter in his mailbox when he got home on the evening of February 10. The next day, Friday, February 11, Bailey talked to Shop Steward Brad Paulding about the Union's discharge demand; Paulding advised him to call the Union's office. Bailey claims to have called the Union's office at lunchtime and to have asked to speak either to George or to Morales, but he admits that when he was told that both were at lunch, he left no message, and made no further tries that day to call the Union's office. Later that day, however, Bailey got a set of employment notice and checkoff forms from someone at work, and took them home with him for the weekend.

On Monday, February 14, Bailey filled out and signed both forms and gave them to someone in the dispatcher's office, a delivery process which Human Resources Manager Anderson agrees is an appropriate and commonly used means by which drivers turn such forms in to GreenTeam for appropriate handling by her office. Still later on February 14, dispatcher Ricardo Ramirez brought the forms back to Bailey and told Bailey that he had signed in the wrong space on the employment notice form. Bailey then crossed out his signature on the wrong space and re-signed in the correct space, then gave both forms back to Ramirez. However, as I elaborate below, these forms received no further management attention until the morning of February 16.

Crediting Hill, I find that on the afternoon of February 15, Bailey called Hill via his truck radio and arranged to meet with Hill at a point on his route where Hill expected to pass on his way home for the day. When they met, Bailey expressed some concern about the Union's discharge demand letter, and Hill reassured him that ''as long as he took care of whatever obligations that needed to be taken care of it shouldn't be a problem.''

Bailey returned to work the next day, February 16, apparently assuming that, by having turned in his forms on February 14, he had done what he had to do to satisfy the Union. Unknown to Bailey, however, the Union had gotten no notice on February 14 or 15 that Bailey had signed these forms. Rather, for unexplained reasons, the forms Bailey had turned in to dispatcher Ramirez on February 14 had languished without responsible attention until the morning of February 16, when Anderson found Bailey's completed forms on the floor of her office when she arrived at work shortly before 6:30 a.m. Apparently, the forms had been

[4] This credibility judgment on a point which does not materially affect my ultimate findings and analyses is based on Bailey's unimpressive demeanor and the somewhat shifting and improvisatory quality of his testimony as a whole. I note further in discrediting Bailey on the matter of his alleged mid-November 1993 submission of forms that he was admittedly aware that no dues or fees were deducted from his paycheck after mid-November 1993, that he admittedly still waited until sometime in late January before making any overtures to the Union concerning his status and union-security obligations, and that he admittedly took no steps to arrange for any payroll deductions until February 14, and only after he had received a copy of the Union's February 8 letter to GreenTeam, supra, demanding his discharge.

Moreover, to the extent my further findings below conflict with certain features of Bailey's testimony, this is because I have discredited Bailey based on similar considerations.

[5] Bailey insisted repeatedly that he did this on January 28, and that he told Hill that he had two reasons for his request—to take care of his union-dues obligations and also to get his mother a birthday present, whose birthday was that very day, January 28. At the end of the trial, however, confronted with payroll and attendance records showing that he did not work on January 21, but did work a full shift on January 28, he acknowledged that he must have been mistaken in claiming that his day off was on January 28. (Presumably, he was either likewise mistaken about his mother's birthday, or his mother's birthday had nothing to do with his request for time off on January 21.)

slipped under her door during her overnight absence. Anderson then gave the forms to Hill, who transmitted copies of them by fax to the Union, addressed to Morales' attention. The Union received this fax sometime between 6:35 and 6:45 a.m.

Bailey continued to work through the end of his shift on February 16. Hill admittedly allowed this because he believed that the Union, having been shown evidence that morning by fax that Bailey had executed an appropriate checkoff form, would soon fax back to GreenTeam a clearance to permit Bailey to remain employed. However, when the Union had not thus cleared Bailey by 5 p.m., the end of Bailey's shift, Hill admittedly decided to discharge Bailey. (Hill further testified that he would not have discharged Bailey if he had received the clearance at any time prior to the end of Bailey's shift on February 16.) Thus it was that Bailey and Shop Steward Paulding were called into Hill's office at the end of the February 16 shift, where Hill announced to the two that he was discharging Bailey in accordance with the Union's demand in its February 8 letter. When Bailey argued that he had turned in his forms, Hill confirmed this, but explained that, absent a clearance from the Union, he had no choice but to dismiss Bailey. Bailey and Paulding then called the Union's office, using Paulding's union-issued telephone charge card to pay for the call. Once Paulding had dialed the number and turned the phone over to Bailey, Bailey waited for four or five rings and then hung up.

On February 17, Bailey called the Union's office in the morning and protested to Marina George that he had been fired, and asked her what he needed to do to be reinstated. George admittedly told Bailey that to be current through February, he would now have to pay 6 months' dues, i.e., $198 for dues for the 6-month period from September 1, 1993, through February 1, plus $300 for the initiation fee, and $10 for the death and illness fund, yielding a total now due of $508. Bailey went to the Union's office and paid $508 to George. She gave him a membership card and a dues receipt, showing that he was ''Paid Thru Feb 94.'' It was then about noon. In Bailey's presence, George then called GreenTeam's office and left a message on Hill's voice mail system, advising that Bailey was paid up and now cleared by the Union to work. Hill had already left for the day, however, to begin an extended weekend at home, and he did not return to his office until Monday, February 21, at which time he received this message for the first time.

However, other GreenTeam agents were made aware of Bailey's changed status in the early afternoon of February 17, when Bailey traveled to GreenTeam's office and met there with Human Resources Manager Anderson and a part owner of the Company, Lou Pellegrini. He showed his new membership card and dues receipt to these agents, and asked to be reinstated on that showing. Anderson and Pellegrini would not allow this on their own, however; neither did they call Hill at home to consult about this development.[6] Instead, crediting Bailey's undisputed account, I find that Anderson only agreed to check with the Company's outside labor relations representative, Michael Lynn, and to set up a meeting for Monday morning, February 21, at which time Bailey and a steward of his choice could deal with Lynn, Hill, and Anderson.

On Friday, February 18, at about 2:45 p.m., the Union's George sent a fax transmission to GreenTeam's number, addressed to and promptly received by Anderson. The fax said:

> This notice is to confirm our message of yesterday 2/17/94 to Mosie Hill (message left on his voice mail) that the above employee, Scott Bailey, is cleared for work, since he is now in good standing with this local union.

On Monday, February 21, Bailey had not been able to get the assistance of a steward, and thus met alone at GreenTeam's offices with Lynn, Hill, and Anderson. It appears from Bailey's essentially undisputed account that the meeting was very brief, and that Lynn served as the Company's spokesman. Crediting Bailey, I find that Lynn rationalized GreenTeam's discharge of Bailey in terms of its contractual obligation to honor the Union's demand for discharge, noting further that GreenTeam had given Bailey an additional day's grace period, i.e., all day of February 16, to get the Union's clearance, and that GreenTeam couldn't have waited forever for the Union's clearance. As to Bailey's request for reinstatement in the light of his current good standing with the Union, Lynn replied summarily, ''Once you're fired, you're fired.''

At the time of these final events, i.e., in the period February 17 through 21, GreenTeam had not hired a replacement for Bailey, nor had it permanently assigned Bailey's driving job to anyone else. Rather, it had covered his route on February 17, 18, and 21 by drawing from its pool of ''casual'' or ''relief'' drivers, who are normally used to fill in when a regular driver is absent due to illness or another temporary reason. Indeed, Hill conceded that Bailey's driving route continued to be covered by drivers from the relief pool for at least another ''couple of weeks'' after Bailey's discharge, before it was finally awarded on a regular, full-time basis to a driver from that pool.

In the following weeks and months, the Union's Morales made several contacts with GreenTeam's outside representative, Lynn, and with one of GreenTeam's owners, Jose Rodriguez, during each of which he tried to persuade GreenTeam to reinstate Bailey, without backpay, if necessary. GreenTeam uniformly rebuffed the Union's efforts. The Union eventually filed the first of the charges here against GreenTeam on March 25. Its attorney, Duane Beeson, followed this charge with a three-page letter to Lynn, dated April 11, in which Beeson urged Bailey's immediate reinstatement, set forth the facts which he thought established that the Union's charge against GreenTeam was meritorious, suggested that it was ''in the interests of both parties that this matter be settled as soon as possible,'' and asked Lynn to ''let me know if you want to discuss this further.'' If Lynn made any response to this letter, it is not of record. However, in a letter dated April 19 to the Board's Regional Office setting forth GreenTeam's position on the Union's charge, Lynn stated that Bailey ''was terminated in accordance with the labor agreement and the actions of the union Secretary-Treasurer, Mr. Robert Morales,'' and that ''the labor agreement does not provide for returning any terminated employee to his prior seniority position. To do so

[6] Hill testified without contradiction that he received no information about developments on February 17 and 18 from anyone at any time during his extended weekend at home.

would obviously violate those individuals with less seniority.''

On May 16, the Union filed a grievance against GreenTeam, protesting its ''continuous refusal to place Scott Bailey back to work.'' The disposition of that grievance, if any, is not of record.

III. ANALYSES AND CONCLUSIONS OF LAW

A. *Legal Setting; Union's Fiduciary Obligations; and GreenTeam's More Limited Obligations*

In pertinent part, Section 8(a)(3) of the Act makes it unlawful for an employer to

> . . . discriminat[e] in regard to hire or tenure of employment or any term or condition of employment to encourage . . . membership in any labor organization: *Provided*, That nothing in this Act . . . shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is later . . . . *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms . . . generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

Section 8(b)(2) of the Act dovetails with, and to some extent incorporates, Section 8(a)(3) and its provisos; that section makes it unlawful for a union to

> . . . cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

Section 8(a)(3) and Section 8(b)(2), when read together, facially intend to legitimize a union's demand for the discharge of an employee who has failed to comply with the requirements of a lawful union-security clause, and to legitimize, as well, an employer's discharge action in reaction to such a union demand. However, under the gloss of case law, both unions and employers are now clearly held to owe more particular duties to the employee targeted by a union's discharge demand for alleged union-security noncompliance. Thus, it is settled that a union operates under a strict fiduciary duty to the targeted employee. *NLRB v. Hotel & Restaurant Employees Local 568 (Philadelphia Sheraton)*, 320 F.2d 254, 258 (3d Cir. 1963), enfg. 136 NLRB 888 (1962). More specifically, this fiduciary duty requires the union to give reasonable ''notice'' to the alleged delinquent in time for him or her to cure the delinquency, which notice must satisfy even more specific requirements as to its form. Thus, in *Communications Workers Local 9509 (Pacific Bell)*, 295 NLRB 196 (1989), the Board said:

> Under *Philadelphia Sheraton*, a union seeking to enforce a union-security clause against an employee has a fiduciary duty to deal fairly with that employee. This requires that before a union may seek the discharge of an employee for the failure to tender owed dues and fees, it must at a minimum give the employee reasonable notice of the delinquency, including a statement of the precise amount and months for which dues are owed and of the method used to compute this amount, tell the employee when to make the required payments, and explain to the employee that failure to pay will result in discharge.

See also, e.g., *Coopers NIU (Blue Grass)*, 299 NLRB 720, 723 (1990); and *Electrical Workers IBEW Local 99 (Electrical Maintenance)*, 312 NLRB 613 (1993).

It is equally settled that, to avoid being implicated in an 8(a)(3) violation by firing an employee based on a union's unlawful discharge demand, an employer, too, owes certain duties to the targeted employee, although these duties do not derive from any fiduciary relationship to the employee, and they involve a different, lowered, standard of care. Thus, in *Valley Cabinet & Mfg.*, 253 NLRB 98 (1980), the Board construed Section 8(a)(3) and its second proviso, supra, as meaning that

> . . . an employer is held to a lower standard than the union . . . that is, it violates the Act only when it discharges an employee at the request of the union when it has ''reasonable grounds for believing'' that the request was unlawful.[7]

B. *The Union's Violations of Section 8(b)(2) and (1)(A)*

If the only attack on the legality of the Union's actions were its alleged failure to give proper notice to Bailey in the terms and forms required by the authorities, supra, I would conclude from my earlier findings that the Union gave all required notice. Thus, I have found that the Union's George spelled out in required detail to Bailey, both on February 1 and February 17, what Bailey was alleged to have owed to satisfy his union-security obligations, and gave him a detailed breakdown of the bases for her calculations, including the months, starting with September 1993, for which he owed dues. And I have also found that the Union's Morales unmistakably told a reluctant Bailey on or shortly after February 1 that he would be fired if he didn't pay up. Moreover, after Morales gave Bailey that warning, roughly another week passed—during which Bailey could have, but did not, try to clear up his arrearage—before the Union made its demand for Bailey's discharge, and yet 1 more full week remained for Bailey to cure any arrearage before the Union's demand for his discharge would be vitalized. Accordingly, I would dismiss the complaint to the extent it merely attacks

[7] 253 NLRB at 99, citing *Forsyth Hardwood Co.*, 243 NLRB 1039, 1040 (1979), and *Conductron Corp.*, 183 NLRB 419, 427 (1970). See also, e.g., *Claremont Resort Hotel & Tennis Club*, 260 NLRB 1088, 1093 (1982).

the *adequacy*, in terms of form or timing, of the Union's ''notice'' to Bailey.

However, the complaint is not so limited, but also alleges, in substance, that the Union independently violated its fiduciary duty to Bailey by demanding, as a condition of keeping his job, that Bailey pay amounts he was not lawfully required under the union-security clause to pay. Thus, the General Counsel cites the Union's consistent demand for a total sum from Bailey which included dues for the month of September 1993, and argues that, under the union-security clause, Bailey's obligation to pay dues did not become perfected until the 31st day after the effective date (September 6, 1993) of the agreement (the memorandum of understanding) that made the union-security clause applicable to recyclables drivers and helpers. I construe the same agreement documents the same way, and I agree that Bailey owed no obligation under the union-security clause to begin paying monthly dues to the Union before October 7, 1993, i.e., the 31st day after the effective date of the memorandum of understanding.

''It is well settled that a union's demand for payment of back dues which arose during a period where there was no obligation to maintain membership cannot lawfully be imposed as a condition of employment, even under a valid union security agreement.'' *Operating Engineers Local 139 (Camosy Construction)*, 172 NLRB 173, 174 (1968). See also *Machinists Local 1198 (Interstate Food)*, 278 NLRB 154 fn. 1 (1986) (unlawfulness of dues assessments for employment within ''30-day statutory grace period''). Therefore, I find that the Union unlawfully used the threat of discharge to collect September 1993 dues from Bailey, and that the Union's unlawful overreaching in this respect alone fatally tainted its February 8 demand for Bailey's discharge. *Operating Engineers Local 139* and *Machinists Local 1198*, supra; see also, e.g., *Service Employees Local 32B-32J*, 289 NLRB 632 (1988).

Although the complaint does not specifically suggest this theory, the General Counsel further argues on a fully litigated record, and I agree, that the Union independently overreached its legitimate rights under the union-security clause by using the threat of discharge to enforce its demand for the $10 death and illness benefit payment, a payment distinct from, and ''other than,'' the ''periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.'' It is settled that when a union attempts to collect any charge other than periodic dues and initiation fees, any such other charge, ''even if levied legitimately, must be collected without impact on employment rights or tenure.'' *Operating Engineers Local 542C (Ransome Lift)*, 303 NLRB 1001, 1003 (1991), citing *Associated Fur Mfrs.*, 280 NLRB 922 (1986). It is clear, moreover, that the $10 fee was in the nature of a one-time special assessment, rather than ''periodic dues.'' *NLRB v. Food Fair Stores*, 307 F.2d 3, 11 (3d Cir. 1962); see also, e.g., *Teamsters Local 439 (Shippers Imperial)*, 281 NLRB 255, 257–258 (1986).

Accordingly, for either of the foregoing reasons, I conclude as a matter of law that when the Union launched its February 8 demand for Bailey's discharge, and maintained that demand through the point on February 16 when Bailey was discharged, the Union violated Section 8(b)(2) and, derivatively, Section 8(b)(1)(A) of the Act.

Taking a separate tack on brief, the General Counsel also argues on a fully litigated record, and I agree, that Bailey satisfied all relevant union-security obligations when, on February 14, he signed and transmitted to GreenTeam's dispatcher Ramirez a set of forms, the most critical of which was the checkoff form authorizing GreenTeam to deduct from his paycheck and transmit to the Union ''any initiation fee, monthly dues or assessments, which are required to be paid by me for the purpose of maintaining membership in the Union[.]'' The parties stipulated that ''One way for a recycling driver [or] helper to satisfy his or her obligations under the union security clause'' was to do precisely what Bailey finally did on February 14, i.e., ''to fill out copies of the forms . . . and turn them in to the employer.'' Given that stipulation, and absent any showing that GreenTeam was not empowered by Bailey's executed checkoff form to transmit to the Union in due course any amounts the Union could lawfully collect from Bailey,[8] it is hard to discern from this record why the Union did not promptly issue a clearance to Bailey once it learned on the morning of February 16 that Bailey had turned in the checkoff form. In this regard, I give little attention to the reason eventually given by Morales from the witness stand for not honoring Bailey's checkoff—that Bailey had been in default for ''seven months.'' Clearly, this explanation is merely inculpatory on one level, for it concedes that the Union was still unlawfully seeking to use limited discharge rights under the union-security clause to collect September 1993 dues from Bailey. Moreover, even if Morales were understood to mean by this that Bailey's lengthy procrastination made Morales especially unwilling to exercise his otherwise admitted tendency to be ''lenient'' and to work with delinquent members who propose a reasonable way to retire any past-owed dues or fees to the Union, this explanation still implies a merely punitive motive. And I judge that such a motive is wholly inconsistent with the Union's fiduciary duty to give even a known, procrastinating delinquent a reasonable opportunity to use established procedures in the workplace—here, the execution and transmittal of a checkoff form—to satisfy his union-security obligations. Accordingly, where the Union knew by the morning of February 16 that Bailey had executed and delivered a checkoff form to GreenTeam, and the Union punitively refused to honor this checkoff as a valid ''tender'' of allegedly owed amounts and thus refused to ''clear'' Bailey for continued work with GreenTeam, I conclude as a matter of law that the Union independently violated Section 8(b)(2), and, derivatively, Section 8(b)(1)(A).

C. *GreenTeam's Violations of Section 8(a)(3) and (1)*

After *Valley Cabinet & Mfg.*, supra, the pivotal question affecting the legality of GreenTeam's discharge of Bailey is this: Did GreenTeam have ''reasonable grounds for believing'' that the Union's demand for Bailey's discharge was an

[8] No one has contended that Bailey's checkoff form was an unacceptable substitute for cash in the Union's hands. Indeed, from Anderson's undisputed testimony, it appears that, on the Union's issuance of a routine monthly billing statement to GreenTeam demanding $508 to cure Bailey's alleged arrearage, GreenTeam would have deducted the demanded amounts from Bailey's next paycheck, and would have transmitted those amounts to the Union, no questions asked.

''unlawful'' one? The answer is debatable if we focus simply on whether or not GreenTeam knew or had reason to believe that the Union's demand was unlawfully tainted by an attempt to collect September 1993 dues and a death and illness fund contribution from Bailey, amounts which the Union had no lawful right to collect by invoking the discharge provisions of the union-security clause. Certainly, nothing on the face of the Union's discharge demand gave GreenTeam any grounds for suspecting that the demand was thus tainted; and there was no showing by the prosecution that GreenTeam knew or had reason to believe from independent sources that the Union's demand was thus tainted.[9] Nevertheless, even if I accept that GreenTeam did not know or have reason to believe that the amount the Union was trying to collect included sums not lawfully collectable through threat of discharge, I judge in the circumstances of this case that GreenTeam's ignorance on those points does not immunize it from liability under Section 8(a)(3) and (1).

First, I would find that the form of the Union's demand-for-discharge letter was itself facially inadequate under the contract to require GreenTeam to fire Bailey; indeed, I think GreenTeam has always overstated its contractual duty to discharge an employee in response to a form letter such as the one used in Bailey's case. It is worth recalling what the contract actually says on this subject, as follows (my emphasis):

> A member in good standing shall mean any member who pays or tenders payment of regular initiation fees and dues to the Union. *Written evidence of loss of good standing will be submitted by the Union to the employer before severance is made from the payroll*.

As I construe this language, GreenTeam is not contractually bound to fire an employee in response to the Union's demand when that demand is grounded simply in a conclusionary assertion that the employee ''is not in compliance with the Union Security Clause.'' Rather, under the contract, GreenTeam is not simply *entitled* to receive from the Union some ''written evidence'' of the employee's ''loss of good standing,'' but it *must* have such ''written evidence'' in hand before it may ''sever'' the employee from the payroll. Accordingly, in this case, GreenTeam had not only a contractual right, but a contractual duty to demand such evidence from the Union before firing Bailey. And if it had acted on that right or that duty, it could be expected that GreenTeam would have gained written evidence from the Union that would have revealed that the amounts the Union was demanding from Bailey included sums not lawfully collectable through threat of discharge. In any case, I judge under *Valley Cabinet & Mfg.*, supra, that the inadequate and conclusionary form of the Union's demand was alone enough to give GreenTeam ''reasonable grounds for believing'' that the Union's demand was an ''unlawful'' one, in that it was not accompanied by the contractually required ''written evidence.''

I reach the same result for the following independent reason, one directly urged by the General Counsel: Before GreenTeam fired Bailey at about 5 p.m. on February 16, GreenTeam had reasonable grounds for believing that Bailey had satisfied his union-security obligations and, therefore, that the Union's failure to provide an affirmative, written clearance for Bailey was based on some factor other than Bailey's noncompliance with lawful requirements. Thus, Company Agents Hill and Anderson knew that the Union had received a fax transmission on the morning of February 16 showing that Bailey had executed and turned in to GreenTeam a checkoff form, a normal way for a driver to satisfy his union-security obligations. Indeed, it was admittedly because of this knowledge, and because he expected the Union to issue a clearance based on Bailey's checkoff form, that Hill allowed Bailey to work a full shift on February 16. In the circumstances, therefore, I judge that GreenTeam had enough grounds for doubting the lawfulness of the Union's continuing demand to implicate GreenTeam in an 8(a)(3) and (1) violation for acting on that demand. *Claremont Resort Hotel*, supra, 260 NLRB at 1093–1094. Moreover, to avoid being so implicated, I judge that GreenTeam at least operated under a duty to make an affirmative inquiry to the Union on February 16 as to its reasons for witholding Bailey's clearance, and that its admitted failure to do so must weigh further against it in my assessment of the violation. *Conductron Corp*., supra, 183 NLRB at 428–429.

As yet a separate ground for finding that GreenTeam violated the Act, I judge that GreenTeam's refusal to reinstate Bailey on notice on February 17 that he had been cleared by the Union to work amounted to an independent breach of Section 8(a)(3) and (1). It is clear that Bailey had not been replaced and that GreenTeam had not lost its need for his services. Indeed, GreenTeam has offered no plausible, legitimate reason for not honoring the Union's clearance and returning Bailey to work. In this regard, GreenTeam's position, as expressed by Lynn, appears to be grounded in the dual propositions that GreenTeam operates under no affirmative contractual obligation to reinstate an employee who has been fired lawfully, and that to have done so in Bailey's case would have somehow ''violated'' the ''seniority'' rights of others. However, the absence of an affirmative contractual duty to reinstate Bailey is quite irrelevant, and is no defense to a charge that the failure to reinstate Bailey violated his statutory rights. And the notion that to have reinstated Bailey would have compromised the seniority rights of other drivers is hard to accept on this record, which affirmatively shows that GreenTeam simply drew on relief pool drivers to cover Bailey's route for several weeks after Bailey's discharge. Therefore, GreenTeam's professed concern for the integrity of its employees' seniority rights, although touching, is an unsatisfactory and implausible ''reason'' for its admitted refusal to reinstate Bailey. And if GreenTeam's actual motive for this refusal to reinstate were a dispositive factor, I would infer from this record that there are only two plausible motivational explanations, both of them proscribed by Section 8(a)(3), and neither of them privileged by any of its provisos: Either GreenTeam wished to ''discourage'' union membership by embarrassing and undermining the Union's status in the eyes of employees by not honoring its attempt to return Bailey to work, or it intended the very opposite—to ''encourage membership'' in the Union by making of Bailey's case an object lesson to other employees of the drastic consequences of failing to pay amounts demanded by the Union

[9] So far as this record shows, Bailey himself was unaware of these lurking taints in the amounts the Union was demanding he pay under threat of discharge and, in any case, he never raised any such objections to any agent of GreenTeam.

under the union-security clause, no matter how unlawful might be those demands.

IV. THE REMEDY

Having found that both the Union and GreenTeam have engaged in certain unfair labor practices, I find that both must be ordered to cease and desist therefrom, to post appropriate notices, and to take certain affirmative actions designed to restore the status quo ante and to effectuate the policies of the Act. Specifically, having found that the Union unlawfully used threat of discharge and withholding of clearance to compel Bailey to pay September 1993 dues of $33 and a $10 death and illness fund assessment, the Union will be ordered to refund such amounts to Bailey,[10] with interest computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987). And having found that GreenTeam violated Section 8(a)(1) and (3) by discharging and refusing to reinstate Bailey, GreenTeam shall be ordered to offer Bailey immediate and full reinstatement to his former position with GreenTeam, without prejudice to his seniority or any other rights or privileges previously enjoyed. In addition, both the Union and GreenTeam shall be ordered to expunge from their files any and all references to the unlawful discharge and unlawful failure to reinstate Bailey, and to notify him in writing that this has been done. Finally, having found that both the Union and GreenTeam share responsibility for Bailey's unlawful termination, each shall be ordered to make Bailey whole for any loss of earnings and other benefits suffered as a result of that termination,[11] subject to the following conditions and limitations:

Normally, where such 8(b)(2)/8(a)(3) violations occur, the union and the employer are held jointly and severally liable for such make-whole amounts, although the union's share of that joint and several liability will be extinguished 5 days after it gives a required notice to the employer that it no longer objects to the targeted employee's employment, following which the employer's backpay liability becomes exclusive and does not terminate until the date it offers reinstatement to the employee. See, e.g., *Claremont Resort Hotel*, supra, 260 NLRB 1088 fn. 1. However, in essential agreement with the General Counsel's principal position as to remedy on brief, I judge that the Union has already unmistakably and effectively communicated such a no-objection notice to GreenTeam, and that its liability for backpay became extinguished 5 days later. *Forsyth Hardwood*, supra, 243 NLRB 1039, 1047, and case cited. Specifically, I find that the 5-day period began on Friday, February 18, when the Union successfully communicated by fax to GreenTeam's Anderson that Bailey was now deemed to be in good standing and was thus cleared for work. Accordingly, I find that the Union's share of liability for backpay became extinguished at the close of the drivers' work shift 5 days later, on Wednesday, February 23, and that GreenTeam's backpay liability thereafter became exclusive and continues until the date it makes the required offer of reinstatement.

[10] See, e.g., *Machinists Local 1198*, supra, 278 NLRB 154 fn. 1; *C.B. Display Service*, 260 NLRB 1102, 1104 (1982).

[11] Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

A. The Respondent Union, Sanitary Truck Drivers and Helpers Local Union No. 350 affiliated with the International Brotherhood of Teamsters, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Causing or attempting to cause Respondent GreenTeam to discharge or otherwise discriminate against employees in violation of Section 8(a)(3) of the Act.

(b) Invoking or threatening to invoke the discharge provisions of an otherwise lawful union-security clause against employees in order to collect amounts which cannot lawfully be demanded from employees as a condition of their hire or tenure.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Scott Bailey whole, with interest, for any loss of pay or benefits he may have suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.

(b) Remove from its files any references to the unlawful discharge and failure to reinstate Bailey and notify him in writing that this has been done and that the discharge and failure to reinstate will not be used against him in any way.

(c) Refund $43 to Scott Bailey, with interest, for September 1993 dues and a death and illness fund assessment it collected from Bailey by unlawfully threatening him with discharge and/or a refusal to clear him for work with GreenTeam.

(d) Post at its offices at San Francisco, California, copies of the attached notice marked ''Appendix A.''[13] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Union's authorized representative, shall be posted by the Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Sign and return to the Regional Director sufficient copies of Appendix A for posting by GreenTeam of San Jose, if willing, at all places where notices to employees are customarily posted.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Union has taken to comply.

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in both Appendix A and Appendix B reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

B. The Respondent Employer, GreenTeam of San Jose, San Jose, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees in response to a union demand where it has reasonable grounds for believing that the demand is not privileged by a lawful union-security agreement or is otherwise unlawful.

(b) Failing or refusing to reinstate an employee discharged pursuant to an unlawful union demand, or otherwise failing and refusing to reinstate an employee where an object thereof is to encourage or discourage membership in a labor organization.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Scott Bailey immediate and full reinstatement to his former position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the actions against him in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharge and failure to reinstate Bailey and notify him in writing that this has been done and that the discharge and failure to reinstate will not be used against him in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facilities in San Jose, California, copies of the attached notice marked ''Appendix B.''[14] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by GreenTeam's authorized representative, shall be posted immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by GreenTeam to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps GreenTeam has taken to comply.

[14] See fn. 13, above.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against employees in response to a union demand where we have reasonable grounds for believing that the demand is not privileged by a lawful union-security agreement or is otherwise unlawful.

WE WILL NOT fail or refuse to reinstate an employee discharged pursuant to an unlawful union demand, or otherwise fail and refuse to reinstate an employee where an object thereof is to encourage or discourage membership in a labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Scott Bailey immediate and full reinstatement to his former position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole, with interest, for any loss of earnings and other benefits suffered as a result of our discharge and refusal to reinstate him.

WE WILL remove from our files any reference to our discharge and failure to reinstate Bailey and notify him in writing that this has been done and that the discharge and failure to reinstate will not be used against him in any way.

GREENTEAM OF SAN JOSE